
(2006) 07 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 386-DB of 2004, Criminal Revision No. 1923 of 2004

Major Singh and Others

APPELLANT

Vs

State of Punjab
 Surinderjit Singh Vs Sohan Singh and Others

RESPONDENT

Date of Decision : 11-07-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2006) 07 P&H CK 0042

Hon'ble Judges : Amar Dutt, J;A.N. Jindal, J

Bench : Division Bench

Advocate : K.S. Ahluwalia, for the Appellant; M.S. Sidhu, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

A.N. Jindal, J.—This judgment will dispose of Criminal Appeal No. 386-DB of 2004 and Criminal Revision No. 1923 of 2004 for enhancement of sentence arising out of judgment dated 27.3.2004 passed by Additional Sessions Judge (Adhoc), Gurdaspur whereby the accused Surinder Singh, Jagir Singh and his sons Hardip Singh & Major Singh were convicted for the offence under Sections 302, 324/34 IPC and were sentenced accordingly for committing murder of Gurcharan Singh and causing injuries to Surinderjit Singh.

2. The aforesaid accused persons and Sohan Singh (since acquitted) are residents of village Vithwan, Police Station Hargobindpur in district Gurdaspur. Gurcharan Singh complainant has two sons, namely; Lakhwhderjit Singh is posted in Warehouse in Gardhiwal, District Hoshiarpur and Surinderjit Singh is also along job in Government High School, Harchowal.

3. In his statement dated 27.1.2000 at about 7.30 p.m, Gurcharan Singh disclosed that when he alongwith his son Surinderit Singh was present in his house, Surinder Singh @ Chhinda accused in front of his house (house across the

road) had been abusing them. When they reached in the vacant plot of Piara Singh to prevent them, then Major Singh, Hardip Singh & Jagir Singh armed with Kirpans, Sohan Singh armed with dang and Surinder Singh armed with datar came there and exhorted to catch them and they be taught a lesson for stopping them to play the speaker of the Gurdwara. At this, Major Singh inflicted kirpan blow on the right side of his head, Hardip Singh inflicted a kirpan blow which he warded off with a stick in his hand to save himself. However, he received injury on his fingers. Surinder Singh inflicted a datar blow on the right ear and neck. Consequently, he fell down. Then Jagir Singh again inflicted a kirpan blow on his right leg. Jagir Singh inflicted a kirpan blow, which hit him on the left side of the face and near his eye. Then his son Surinderjit Singh came forward to rescue him. Then Major Singh inflicted a kirpan blow, which hit the figures of Surinderjit Singh. Surinder Singh also gave a datar blow, which hit on the thumb of his left hand. In the meanwhile, Chanan Singh son of Jawand Singh and Sukhdev Singh son of Mohan Singh, both residents of village Vithwan came at the spot and witnessed the occurrence. Surinderjit Singh rushed back to his house and on reaching the roof of the house, he fired gun shots twice in the air to scare away the accused. Consequently, the accused ran away. Surinder Singh shifted Gurcharan Singh to Guru Teg Bahadur Hospital, Amritsar where ASI Joginder Singh came and recorded his statement, on the basis of which, FIR under Sections 326, 324, 148 and 149 IPC, was registered. Unfortunately, Gurcharan Singh died on 29.1.2000, as a result of which, offence was converted into u/s 302 IPC. On registration of the FIR, investigation commenced. After completing all the formalities, the challan against the accused was presented in the Court. Consequently, the Court framed the charges against the accused under Sections 148, 302, 324 read with Section 149 IPC to which they pleaded not guilty and claimed trial.

4. On commencement of trial, prosecution, in order to establish the charges against the accused, examined 14 witnesses. PWI Dr. Jagdish Singh Gill, Medical Officer, Civil Hospital, Baba Bakala had conducted the medico legal examination on the person of Gurcharan Singh and observed the following injuries :

1. 7.5 x 1.5 cm incised wound present on the right side of head 13 cm above right eyebrow, vertically placed, margins red swollen and clean cut. Edges clean cut. Clotted blood was present.
2. 5 x 0.8 cm incised wound present on the right ear pinna in its middle extending on the right side of neck, obliquely placed. Margins red, swollen and clean cut. Edges clear cut. Clotted blood was present.
3. 4 x 0.2 cm incised wound present obliquely on the left side of face, 3.5 cm lateral to outer angle of left eye. Diffused swelling present. Margins red, swollen and clean cut. Edges clean cut. Clotted blood present.
4. 5.2 x 0.2 cm incised wound present obliquely on the middle phalynx region of right index finger, the distal part attached to the proximal part only on the medial

side, 3.5 cm proximal to tip of forger. Margins red, swollen and clean cut. Edges clean cut. Clotted blood present.

5. 1.5 x 0.2 cm incised wound present on the posterio lateral aspect of right middle finger in the proximal phalynx region 4 cm distal to knuckle of finger. Margins red swollen and clean cut. Edges clean cut. Clotted blood present.

6. 14.5 x 2.5 cm incised wound present obliquely on the postero medial aspect of right leg 25 cm below tibial tuberosity. Margins, swollen and clean cut. Edges clean cut. Clotted blood present.

7. 15.6 x 05 cm incised wound present on the anterior lateral and posterior aspect obliquely of the left leg 25 cm below tibial tuberosity. Margins red, swollen and clean cut. Edges clean cut. Clotted blood present.

5. The Doctor opined that all the seven injuries were the result of sharp edged weapon. After X-ray examination he, vide his report Ex. PA declared injuries Nos. 1 to 3 and 5 as simple whereas injuries Nos. 4, 6 and 7 as grievous in nature.

6. On the same day i.e. 28.1.2000 at 11.45 a.m., he also examined Surinderjit Singh and observed the following injuries on his person :

1. 4 x 5 cm incised wound present on the dorso medial side of base of left thumb. Obliquely placed, Tailing present dorsally. Margins red swollen and clean cut. Edges clean cut. Skin deep. Clotted blood present.

2. 1 x 0.1 cm superficial cut present on the proximal phalynx region of palmer aspect of left thumb two cm distal to injury No. 1. Margins clean cut, red and swollen. Edges clean cut. Clotted blood present.

7. He proved the medico legal report Exhibit PC in this regard. Both the injuries were declared as simple and having been caused with sharp edged weapon. Duration of the injuries was given as 12 to 24 hours.

8. PW2 Dr. Ashok Chanana, Assistant Professor, Department of Forensic Medicines and Toxicology, Govt Medical College, Amritsar who had conducted the post-mortem examination of Gurcharan Singh on 29.1.2000 at 12.15 p.m., vide his report Exhibit PD observed 17 injuries on his body and further observed as under :-

1. An oblique incised wound 140 cm with clotted blood was present in lower 1/3rd of right leg in its lower inner aspect underlying bone was fractured. Dark coloured infiltration of blood present at the site.

2. A stitched wound 14 cm long with stitches intact was present in lower 1/3rd of left leg at its anterolateral aspect obliquely placed, underlying both bones were having cut fractures. On dissection clotted blood was found.

3. A stitched wound 2.5 cm long with stitches intact was present on the heel of left foot. On dissection fracture of left both bones was present underneath injury No. 2. A metallic nail was present in the heel bone of left foot.

4. An oblique incised wound 4 x 1.5 cm with clotted blood present on the back of right index finger in its middle digit. Underlying bone was fractured. Clotted blood present at the site.
5. An oblique incised wound 1.5 x 0.5 cm muscle deep with clotted blood was present on the back of right thumb in its middle.
6. An oblique incised wound 1.5 x 0.5 cm muscle deep with clotted blood was present on the back of right middle finger in its proximal digit.
7. Multiple (six) reddish brown abrasions varying in size from 1.5 x 1.2 cm to 2x1 cm were present on the outer aspect of right upper arm in its 1/3rd.
8. A reddish brown abrasion 9 x 1 cm horizontally placed was present on the outer aspect of right upper arm in its middle.
9. A dark bluish bruise 11 x 10 cm was present on the anterior aspect of right upper arm in its middle.
10. A reddish brown abrasion 12 x 0.5 cm obliquely placed was present on the back and right side of the scapular region on chest in its centre.
11. A reddish brown abrasion 7 x 1.05 cm horizontally was present on the left lateral aspect of the chest. 15 cm away from nipple at o'clock position. On dissection underlying third to 4th ribs in the mid axillary line was fractured. Clotted blood was present at the site.
12. Reddish brown abrasion 4 x 0.5 cm was present on the left cheek 4 cm away from the outer angle of left eye.
13. Reddish brown abrasion 2 x 2 cm was present on the left malar eminence of face.
14. A Reddish brown abrasion 2 x 2 cm was present on the left side of face 1 cm above injury No. 13
15. An obliquely incised wound 6 x 1.5 cm with clotted blood was present on the right temporal region of head. The responding pinna was cut. Underlying bone was fractured. Clotted blood was present at the site.
16. An incised wound 9 x 1 cm bone deep, with clotted blood vertically placed was present on the right parietal region of head in its centre.
17. A reddish brown abrasion 10 x 0.8 cm horizontally placed was present on the back of the chest.
9. The heart and bladder were empty. Stomach contained 150 cc of partly digested food material. Small intestines contained chime and large intestines contained faeces. The stomach, liver, spleen and kidney were pale. Injuries Nos. 4, 5 and 6 were in one line. According to him, Gurcharan Singh was died due to haemorrhage and shock as a result of cumulative effect of injuries Nos. 1 to 6,

11, 15 & 16, which were sufficient to cause death in ordinary course of nature. Here it may be clarified that 7 injuries as pointed out by PW1 Dr. Jagdish Singh Gill tally with the injuries as discussed by Dr. Ashok Chanana PW2. The remaining injuries are abrasions.

10. PW-10 Dr. Ashok Sharma, Guru Teg Bahadur Hospital, Amritsar has stated that on the application moved by the police Exhibit PN on 28.1.2000 at 10.55 a.m. he declared Gurcharan Singh fit to make statement and on the application Exhibit PO. Vide endorsement Exhibit PO/1 at 11.40 p.m., declared Surinderjit Singh fit to make the statement.

11. PW3 Surinderjit Singh in his deposition has narrated all the circumstances leading to the occurrence. PW4 Sukhdev Singh by his deposition has corroborated the testimony of Surinderjit Singh PW3 in all minute details. PW5 HC Subhinder Singh No. 2619 has made a formal statement Exhibit PJ. PW6 Satish Chander, Naksha Nawis (draftsman) has proved the site plan Exhibit PK of the place of occurrence. PW7 Inspector Baldev Singh has deposed that he arrested the accused Surinder Singh on 10.2.2000 and interrogated him on 12.2.2000. Then he made a disclosure statement Exhibit PL u/s 27 of the Evidence Act and got the datar (weapon of offence) Exhibit P1 recovered from the disclosed place. This witness after preparing the sketch plan of the datar, sealed the same and took the same into possession vide recovery memo Exhibit PL/1. PW8 Ramesh Lal Junior Engineer has stated that on 27.1.2000, he was on duty from 2.00 p.m. to 10.00 p.m. at Control Room Hargobindpur, village Khotharwal, which falls within his jurisdiction on that day the electricity supply continue in the village without break.

12. PW9 MHC Tarsem Singh has tendered into evidence an affidavit Exhibit PM. PW12 ASI Jeginder Singh and PW13 Inspector Paramjit Singh are the Investigating Officers. PW13 Inspector Paramjit Singh besides conducting other investigation, had recovered the weapon of offence i.e. kirpan from Jangir accused in pursuance of the disclosure statement u/s 27 of the evidence Act Exhibit.PS/2.

13. After examining the aforesaid 14 witnesses, the prosecution closed its evidence and accused persons were examined u/s 313 Cr.P.C. in which all the incriminating circumstances appearing against them were put to them to which they pleaded as incorrect.

14. Sohan Singh and Jagir Singh further explained that they were not present at the time of occurrence and were falsely implicated in the case.

15. Major Singh accused submitted that he was serving as Granthi in the Gurdwara at village Ghass which is at a distance of 30 kilometres from his village and he was not present there on the alleged day of occurrence.

16. Surinder Singh accused had taken the following defence.

Gurcharan Singh deceased was an office bearer of our village Gurdwara. He was

removed from that post by the village Panchayat but he opened a small Gurdwara in his own house where he installed loud speaker. In village Gurdwara loud speaker used to play in the morning and in the evening at the time of "Reh-raas". Gurcharan Singh also used to play his loud speaker in the Gurdwara in the evening at the time of Reh-raas at his house. I was operating speaker in the Gurdwara on the day of occurrence. It was a Reh-raas time and I had put loud speaker in the village Gurdwara. I was standing in front of my house and was listening to the Reh-raas Path. The speaker in the house of Gurcharan Singh was also on. In the meantime, Surinder Singh, Gurcharan Singh, Chanan Singh and Sonu came there and asked me to switch off the speaker of the Gurdwara as it interfered with the voice of speaker at his house. I told them that speaker of the Gurdwara could not be stopped as it was for public use. On this Chanan Singh raised a lalkara that I should be killed for playing the speaker at Gurdwara. On this Surinder Singh who was armed with kirpan, and Gurcharan Singh who was armed with dang gave me injuries with their respective weapons. Sonu who was having 12 bore gun fired at me which missed the target. On my `raula", my brother Joginder Singh who has since died and my wife Kinder Kaur also came there. Joginder brought datar and my wife brought a dang from my house. I also snatched kirpan of Surinderjit Singh and caused injuries to Gurcharan Singh and Surinderit Singh in our self defence. My co-accused were not present there. I am innocent.

17. Hardip Singh accused took the following defence :

On the day of occurrence I had gone to Sugar Mill, Butter on tractor Number PAT-1080 to deliver sugarcane. I produced the evidence before the police, and I was declared innocent. I am the driver of Daljit Singh and had gone to Sugar Mill, Butter to deliver Sugarcane at his instance.

18. In their defence, they examined Doctor Jagdev Singh, Medical Officer, Civil Hospital, Batala who medico legally examined Surinder Singh accused on 27.1.2000 at 11.50 pm and observed the following injuries on his person :

1. Incised wound 14.5 x 1 cm into bone deep on outer and front of left lower leg at its middle and was slightly obliquely placed. Fresh blood clots were present at wound side. On removing the clots, the wound was bleeding profusely. Injury was kept under observation for x-ray examination.

2. Incised wound 1-3/4 cm x 1/2 cm into case bone deep on front of left lower leg and was 1 cm above injury No. 1. Fresh blood clots were present at wound side. On removing the clots, the wound was bleeding. Injury was kept under observation for x-ray examination.

3. Incised wound 5-1/2 x 3/4 cm into bone deep on the right side of the head, started from anterior hairline and was parallel to mid line. Hair and hair bulbs were cut. Fresh blood clots were present at wound side. On removing the clots the wound was bleeding. Advised for x-ray examination.

4. Reddish contusion 5-1/2 cm x 1-1/2 cm on the outer and front of left upper arm.

5. Reddish contusion 6 cm x 4-1/2 cm with swelling on outer part of left elbow, Advised x-ray

6. Abrasion 1 cm x 1/2 cm with reddish contusion 3-1/2 cm 1-1/2 cm on the outer and front of left forearm at its upper part.

7. Reddish contusion with a defused swelling covering bridge of nose. Advised x-ray examination.

19. He further opined that injury Nos. 1 & 2 on the person of Surinder Singh were grievous in nature and the rest were simple. He further stated that extent and depth of cut due to injury No. 1 is not mentioned. Extent of bone cut has not been mentioned in the x-ray report. He further stated that the cut of the injuries Nos. 1 & 2 may be superficial as he has not mentioned the depth of cut of the bone underneath the wounds.

20. DW2 Preet Singh Parwana, Cane Accountant has stated that on 27.1.2000, a truck of Sugarcane came and a token was issued in the name of Sukhwinder Singh. He has not given the time of issuing the token. DW3 Daljit Singh has stated that Hardeep Singh had taken Sugarcane belonging to him to Rana Sugar Mill on 27.1.2000 and had obtained the payment from the Sugar Mill on 28.1.2000. He had sold the sugar cane on the slip issued to Sukhwinder Singh. DW4 Gurmti Singh SMO, Civil Hospital, Ajnala testified that he radiologically examined Surinder Singh accused and observed that there was partial cut or fracture of tibia and fibula bone of the left leg. But, he has stated that he has not seen x-ray film. He has not mentioned the extent of cut in his report. DW5 Kulwant Singh is a resident of village Ghas Kalar. He has tried to prove the plea of alibi set up by Major Singh accused.

21. After hearing both the Public Prosecutor as well the defence Counsel, learned trial Court acquitted accused Sohan Singh and convicted the remaining accused under Sections 302, 324/34 IPC and sentenced them to imprisonment for life and to pay a fine of Rs. 5000/- each and in default of payment of fine they were to further undergo six months sentence u/s 302 IPC. They were also sentenced u/s 324/34 IPC.

22. Feeling aggrieved by the impugned judgment Mr K.S. Ahluwalia, learned counsel for the appellants has urged vehemently that there is suppression of facts of the dispute and investigation has not been fair. Medical evidence is at variance with the testimony of Dr. Ashok Chanana, who had conducted the autopsy of the dead body of Gurcharan Singh, inter se, ocular evidence. There is delay in lodging the FIR, which results into concoction of the prosecution version and addition of the accused. The eye witnesses have failed to withstand the test of cross-examination. They have not only exaggerated the facts but also have added the innocent persons. At the maximum, it was a case of sudden fight and

in that process, the injuries on the person of the accused persons were bound to occur. The accused persons have not explained injuries on the person of Surinder Singh accused. Therefore, inference will be drawn that the occurrence did not take place in the manner as described by the prosecution.

23. As regards contradiction in medical evidence coming from the mouth of PW 1 Dr. Jagdish Singh Gill, which is contradictory to the testimony of PW2 Dr. Ashok Chanana, cannot be condemned for such variations. No doubt PW1 Dr. Jagdish Singh Gill in the M.L.R. had described only seven injuries on the body of Gurcharan Singh i.e. only incised wound of right-side of the head, right ear-pinna, right side of the neck, left side of the face, middle pharynx, posterior middle aspect of the right leg and later posterior aspect of the left leg. He had conducted medico-legal examination on 28.1.2000 at 11.45 p.m, whereas Dr. Ashok Chanana, who had conducted the post-mortem examination on the dead body of Gurcharan Singh on 29.1.2000 at 12.15 p.m pointed out 17 injuries on the body of Gurcharan Singh. However, on close scrutiny of testimonies of both the witnesses, it deserves to be pointed out that Dr. J.S. Gill did not point out the minor injuries to which he may have thought insignificant to mention, whereas Dr. Ashok Chanana mentioned all the injuries even abrasions. The injuries Nos. 7 to 14 are only abrasions, which according to him, were not necessary to be pointed out. Time, place of occurrence and the occurrence have been admitted by the accused. Therefore, if Dr. Jagdish Singh Gill did not point out the minor injuries, then it may reflect his efficiency, competency and caliber. It is very sad state of affairs that he took the injuries of Gurcharan Singh very casually and left some of the injuries un-noticed. Without commenting on this misconduct on his part, we have it to the wisdom of the competent authority to proceed against him as per law. However, the fate of this case can't be left at the hands of the witnesses for this fault on his part, however, grave it may be. In my case non-mentioning of all the injuries by PW1 Dr. Jagdish Singh Gill which were later on noticed and mentioned by Dr. Ashok Chanana PW2, does not effect the substratum of the prosecution case.

24. In any case, the responsibility of the fault committed by the Doctor in pointing out the minor or superficial injuries at the time of MLR, cannot be shouldered upon the complainant. It may further be pointed out that ocular version is different with the statement of Dr. Jagdish Singh Gill PW1 It may further be observed that the occurrence took place at 7.30 p.m. The accused five in number armed with deadly weapons had made rain of blows. Therefore, it was difficult to count or attribute injuries at that time. In view of the fact that occurrence has not been disputed by the accused even in evidence as well as ocular version, also is not fatal to the prosecution case.

25. Now, coming to the delay in lodging the FIR. It needs to be pointed out that the occurrence in this case took place on 27.1.2000 at 7.30 p.m. Gurcharan Singh was medico legally examined for the first time on 28.1.2000 at 10.00 a.m. FIR was lodged after 2-1/2 hours i.e. on 28.1.2000 at 12.30 p.m. and completed

at 4.00 p.m. As such, there is no delay in lodging the FIR.

26. We also do not approve the other contention raised by the counsel for the appellants that the testimony of Surinderjit Singh being contradictory in itself, does not deserve to be placed reliance whereas the presence of Sukhdev Singh at the spot, is doubtful because Surinderjit Singh PW3 is a stamped witness. He gave minute details of the occurrence and the autopsy of examination reflects that despite cross-examination conducted upon him, nothing could be listed from his testimony, which could be helpful to shatter the prosecution case and build up a case of the accused. Similarly, the presence of Sukhdev Singh at a place, cannot be doubted as he is the neighbour and he had no axe to grind against the accused. It is clear from his deposition that he was attracted by the cries at the spot. He has categorically stated that when he reached the spot, accused Major Singh, Hardip Singh armed with kirpans, Surinder Singh armed with datar, Sohan Singh armed with danda, were present. Sohan Singh raised lalkara to catch Gurcharan Singh and to teach him a lesson for stopping them from playing of the loud speaker. In the meantime, Major Singh inflicted kirpan blow on the head of Gurcharan Singh. Hardip Singh inflicted a kirpan blow but it was warded off by Gurcharan Singh with the help of dang, which he was carrying at that time. Consequently, the blow fell against his index and middle fingers of his right hand. Surinder Singh inflicted datar blow on his head and he fell down. Jagir Singh inflicted a kirpan blow on his right leg. Jagir Singh inflicted a kirpan blow on his head. When Surinderjit Singh came to save Gurcharan Singh then Major Singh accused inflicted kirpan blow, which hit Surinder it Singh on the thumb and index of the finger of his hand. Surinder Singh inflicted a datar blow on the hand of Surinderjit Singh Surinderjit Singh then ran to his house and he fired gun shots while going at the roof top. He has also withstood the test of cross examination. It is not the quantity of evidence which weighs but it is the quality i.e. to be examined while evaluating the testimonies of the witnesses. Hence, the importance and primacy of the quality of the trial process. Eye witnesses would require careful independent assessment and valuation for their credibility, which should not adversely pre judged, making another evidence including the medical evidence as the sole touch stone for the test of credibility. Thus, while, testing of aforesaid two witnesses, it does not suggest any such infirmity shedding their credibility and raising any doubt over the prosecution version. As such, we have no reason to discard their testimony and to disbelieve the prosecution version.

27. The other contention advanced by the learned counsel for the appellants is that since, the prosecution has failed to explain the injuries on the person of Surinder Singh, genesis of the occurrence will be deemed to have been suppressed by the prosecution. Having given our thoughtful consideration over this contention, we do not find ourselves convinced to the same. No doubt Dr. Jagdev Singh, Medical Officer, Batala, who examined Surinder Singh injured on 27.1.2000 at 11.50 p.m observed the following injuries on his persons :

1. Incised wound 14.5 x 1 cm into bone deep on outer and front of left lower leg

at its middle and was slightly obliquely placed. Fresh blood clots were present at wound side. On removing the clots the wound was bleeding profusely. Injury was kept under observation for x-ray examination.

2. Incised wound 1-3/4 cm x 1/2 cm into bone deep on the front of left lower leg and was 1 cm above injury No. 1. Fresh blood clots were present at wound side. On removing the clots, the wound was bleeding. Injury was kept under observation for x-ray examination.

3. Incised wound 5-1/2 cm x 3/4 cm into bone deep on the right side of the head, started from inferior hairline and was parallel to midline. Hair and hair bulbs were cut. Fresh blood clots were present at wound side. On removing the clots, the wound was bleeding. Advised x-ray examination.

4. Reddish contusion 5-1/2 cm x 1-1/2 cm on outer and front of left upper arm.

5. Reddish contusion of 6 cm x 4-1/2 cm with swelling on outer part of left elbow. Advised X-ray.

6. Abrasion 1 cm x 1/2 cm with reddish contusion 3-1/3 x 1-1/2 cm on outer and front of left forearm at its upper part.

7. Reddish contusion with a diffused swelling covering bridge of nose. Advised x-ray examination.

28. On receipt of the x-ray report, injuries Nos. 1 and 2 were declared grievous in nature whereas the remaining injuries were declared as simple. Injuries Nos. 4 to 7 are either contusion or abrasion. Injury No. 7 is on the non-vital part of Surinder Singh injured. DW1 Dr. Jagdev Singh has admitted that he did not see the extent of depth of cut in injury Nos. 1 and 2 in the x-ray films and it is not also so mentioned in the x-ray report. He has also admitted in depth of the cut in injury Nos. 1 and 2, which is not mentioned in the MLR. The possibility that bone cut was superficial, cannot be ruled out. No x-ray report has been proved on the file. Thus, it will not be unsafe to conclude that injuries being minor and simple in nature, if not explained, cannot be said to be fatal to the prosecution case. The suffering of such injuries for making safer defence, cannot be ruled out. It has been observed in *Amar Malla and others v. State of Tripura*, 2002(4) All India Cri LR (S.C.) 251, as under.

The next submission of Shri Misra is that in the alleged occurrence accused Amar Malla, Milan Malla and Prafulla Debnath had also received injuries and the prosecution has failed to explain the same. From the nature of injuries said to have been received by these accused persons, it would appear that the same were simple and minor ones. It is well settled that merely because the prosecution has failed to explain injuries on the accused persons, ipso facto the same cannot be taken to be a ground for throwing out the prosecution case, especially when the same has been supported by eye-witnesses, including injured ones as well, and their evidence is corroborated by medical evidence as well as objective finding of the Investigating Officer.

29. Not only this, ASI Joginder Singh, who partly investigated the case and recorded the statement of Gurcahran Singh states that he did not come to know about the injuries of Surinder Singh accused. Similarly, Inspector Paramjit Singh PW13, the other Investigating Officer also states that he did not receive the medico legal report of the accused Surinder Singh. Had Dr. Gill seen the MLR of Surinder Singh, then there was no reason for receiving of the same at the police station and to set the machinery of law in motion by the police for recording the statement of Surinder Singh who allegedly got himself medico-legally examined from Civil Hospital at Batala. As such it will not be unsafe to hold non explanation of the injuries on the person of the accused, which are not fatal in the present case. Reliance may be placed on the judgment of State of U.P. v. Kishan Chand, 2002(4) All India Cri LR (S.C.) 251.

30. Now, coming to the question whether the accused are entitled to the right of private defence or they suffer injuries in the sudden fight is concerned, it will be necessary to reproduce the scene of occurrence. On scrutiny of the site plan Exhibit PR/3, the house of Surinder Singh is cross street and the occurrence took place in the plot of Piara Singh, which adjoins the house of Gurcharan Singh deceased. Occurrence had taken place at about 7.30 p.m. and the case set up by Surinder Singh accused in statement u/s 313 Cr.P.C. is that Surinderjit Singh armed with kirpan, Gurcharan Singh armed with dang and Sonu armed with 12 bore gun came to him and told him to switch off the speaker of the Gurdwara, which was interfering with the voice of the speaker being played at the house of the deceased. When he refused to do so, then Surinder Singh and Gurcharan Singh caused injuries to him, Sonu also fired shots from his gun which missed the target. He had snatched the kirpan from Surinderjit Singh, Kinder Kaur armed with dang as well as Joginder Singh who was armed with datar, also came there and they caused injuries to Gurcharan Singh and Surinderjit Singh was standing in front of his house and was abusing them. When Gurcharan Singh and Surinderjit Singh went to lodge the protest, they attacked and caused injuries to them.

31. Now, coming to the two pleas raised by the accused, it may be mentioned that since the occurrence took place in the open plot of Piara Singh, the accused were armed with kirpans as well as sticks respectively, caused 17 injuries to Gurcharan Singh and two injuries to Surinderjit Singh. Whereas injuries on the person of Surinder Singh are concerned; they are simple and lesser in number. The accused party, 5 in number had attacked the two people. Therefore the plea of right of private defence is not available to them. Not only this, even as the accused, Surinderjit Singh snatched kirpan carried by Surinder Singh. Gurcharan Singh was only holding a danda and he admittedly, did not cause any injury even medico-legal report does not disclose that if Gurcharan Singh had caused any injury. As soon as weapon was snatched, the right of private defence goes. Consequently, version set up by the accused that his wife and Gurcharan Singh came and caused injuries to them, dashes to the ground.

32. To invoke exception 4 of Section 300 of the Indian Penal Code, 4 requirements must be satisfied, namely; (a) it was without pre-motivation, (b) in sudden fight, (c) it was committed in a heat of passion, (d) it was committed upon a sudden quarrel, (e) it was committed without the offender having taken undue advantage or acted in any cruel manner, (f) when the prosecution evidence does not justify interference that there was any sudden fight and the appellant certainly acted in a cruel manner, it can be said that he took undue advantage of the deceased. There is no justification for applying exception 4 to Section 300 IPC. For example when two men engage in a sudden fight, the death of one of them, is not natural or inevitable. It can be said that either of them desired the end of the other. Even if, killing is not pre-motivated, but if the act causing killing, is pre-motivated. In that case also, exception would not apply. In the instant case. sudden fight is not available to the accused. The accused five in number armed with deadly weapons like kirpans and datar while coming from their house and after coming across the road attacked the deceased and injured Surinder Singh when they had gone only to lodge the protest for stopping them from abusing him and his family. But, they took undue advantage of the fact and acted in a cruel manner, gave fatal blows on the head of Gurcharan Singh. Thus, the plea cannot be said to be a sudden fight, also cannot be made available to the accused.

33. Now, coming to the plea of alibi raised by Sohan Singh and Jagtar Singh. Except the medico legal statement, no evidence has been lead by them to prove the plea of alibi. Regarding the alibi of Hardip Singh that on the fateful day, he was in Rana Sugar Mill where he had gone to drop sugarcane of Daljit Singh whose truck he drives. This fact has not been proved by examining any employer that he was employed on his truck. No documentary evidence regarding his truck, has been proved on the record. Even otherwise, token was issued in the name of Suvinder Singh s/o Virsa Singh. Therefore, it is difficult to imagine how sugar cane was sold by Daljit Singh at the time of occurrence.

34. Having scrutinized the trial Court judgment, no such infirmity has been detected, which compel us to interfere with the same. Consequently finding no reason, appeal is hereby dismissed. Necessary steps be taken against the accused Major Singh s/o Jagir Singh, Jagir Singh s/o Teja Singh, Surinder Singh, s/o Sohan Singh and Hardip Singh s/o Jagir Singh for taking them into custody for serving the remaining part of their sentence, if they are on bail.

35. The revision petition for enhancement of sentence is without merit, as such, the same is dismissed.